

REMARKS

Claims 1-30 remain pending in the instant application. Claims 15-20 and 25-30 are withdrawn from consideration. Claims 1-14 and 21-24 presently stand rejected to. Claims 1, 2, and 21 are amended herein. Amendments to the claims are supported by, for example, Fig. 5 and accompanying description. No new matter has been added. Entry of this amendment and reconsideration of the pending claims are respectfully requested.

Examiner's Interview

Applicants thank the Examiner for the examiner's interview conducted on June 17, 2008. The rejections to the claims, cited art, and potential amendments to the claims were discussed. No agreement was reached.

Claim Rejections – 35 U.S.C. § 101

Claims 21-24 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The specification has been amended to remove the reference to carrier signals. Accordingly the §101 rejections have been overcome.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 4, 9, 13, 21, 22 stand rejected under 35 U.S.C. 35 U.S.C. § 102(e) as being anticipated by Roese (US 2004/0158735). The Office Action concedes in paragraph 11 that Roese does not disclose that the authentication function performed by the firmware is done so in a pre-boot phase. Independent claims 1 and 21 have been amended to include limitations that are performed during a pre-boot phase. Accordingly the §102 rejections have been overcome. The independent claims are also allowable for reasons discussed below with respect to the §103 rejections.

Claim Rejections – 35 U.S.C. § 103

Claims 2, 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Roese in view of Intelligent Platform Management Interface (IPMI) Specification.

Claims 5-8, 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Roese in view of Cotichini (US 6,300,863).

Claims 10-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Roese in view of Buer (US 2004/0250126).

Claim 1, as amended, recites:

A method comprising:

loading port authentication firmware instructions in a supplicant system
during a pre-boot phase; [[and]]

authenticating a network port hosted by an authenticator system to which
the supplicant system is linked via execution of the port authentication firmware
instructions on the supplicant system, wherein the network port is authenticated
during the pre-boot phase using authentication credentials;

booting an operating system in the supplicant system;
passing the authentication credentials to the booted operating system; and
using the passed authentication credentials and the booted operating system to
perform a port authentication process.

As discussed above, Roese does not disclose that the authentication function performed by the firmware is done so in a pre-boot phase. Thus Roese further does not teach the above-emphasized limitations. IPMI fails to overcome this deficiency because IPMI instead discloses platform management in a preboot or OS-absent environment. Thus the cited portion of IPMI does not teach, for example, passing the authentication credentials to the booted operating system. Cotichini fails to overcome these deficiencies because Cotichini instead discloses a ComputTrace agent that is adapted to work under an SMM environment that is triggered in response to an SMI event (col. 30, lines 6-22). This is not read upon by the claim limitations, because the SMM environment operates independently of an OS.

Buer fails to overcome the deficiencies of Roesse, IPMI, and Cotichini because Buer instead teaches a secure boot process in advance of subsequent security processing wherein typical security processing includes the receipt, by the online TPM, of one or more commands from an application. The commands are then proxied out to the security module [0026]. This allows the online TPM to communicate directly to the network, and therefore to the security module (without having to deal with the TCP/IP stack) [Abstract]. Accordingly, information in the TPM is used to communicate across a network, and does not, for example, pass to the authentication credentials to the booted operating system of a supplicant system. Accordingly, the cited references, either singly or in motivated combination, fail to teach in fairly motivated combination the limitations of amended claim 1. Thus Claim 1 is allowable.

MPEP 2141 section II states in relevant part:

As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (A) Ascertaining the differences between the claimed invention and the prior art; and
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art (emphasis added).

Further, MPEP 2141 section II states in relevant part:

Office personnel fulfill the critical role of factfinder when resolving the *Graham* inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would

have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. 35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.

In short, the focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense" (emphasis added).

Further, MPEP 2141.03 section III states in relevant part:

The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." Ryko Mfg. Co. v. Nu-Star, Inc., 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991). The examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand. Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984)(emphasis added).

Applicant also seasonably traverses the obviousness rejections that cite art published after the filing date of the instant invention because, for example, the Office Action fails to properly resolve the level of ordinary skill in the pertinent art at the time the invention was made. The Office Action apparently relies upon Roese and Buer ("102(e)-type art") under 35 USC 102(e) as a basis to assert that one of ordinary skill in the art at the time the invention was made would find the instant invention obvious. However, contrary factual evidence in the record shows that Roese and Buer were not published (and were thus held in confidence by the USPTO under 35 USC 122) until publications (August 12, 2004 and Dec. 9, 2004, respectively) that are after the filing date of the instant specification. In short, the written record does not clearly set forth what a person of ordinary skill in the pertinent art would have known at the time of the invention.

Furthermore, the requirement to keep confidential the teachings of 102(e)-type art argues against the assumption that such art can be relied upon (for example, to resolve the level of ordinary skill in the pertinent art at the time the invention was made) because the teachings of the confidential art, if published, would raise the level of ordinary skill in the pertinent art at the time the invention was made. Thus, merely citing “documentary” art (including art that has not been published), does not clearly set forth what a person of ordinary skill in the pertinent art would have known at the time of the invention.

Accordingly, the instant invention would have not been obvious to one of ordinary skill in the art at the time the invention was made because, for example, the Office Action does not resolve the level of skill of one of ordinary skill in the art at the time the invention was made. The Office Action fails to establish a prima facie case of obviousness, for example, at least because no resolution of level of skill has been clearly set forth and/or because of the existence of contrary factual evidence as to the level of the skill in the pertinent art at the time the invention was made.

Claim 21 is at least allowable for the reasons stated above. Dependent claims are allowable because they depend from allowable independent claims.

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

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June 18, 2008
Date